THE NEW-YORK
CITY-HALL RECORDER.

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AT a COURT of GENERAL SESSIONS of the Peace, holden in and for the City and County of New-York, on *Monday*, the 2d day of *October*, in the year of our Lord one thousand eight hundred and twenty.

PRESENT

The Honourable
CADWALLADER D. COLDEN, *Mayor.*
ASA MANN, } *Alder-*
GEORGE B. THORP, } *men.*
P. C. VAN WYCK, *Dist. Att.*
JOHN W. WYMAN, *Clerk.*

(CONSPIRACY.)

MATTHEW R. LEWIS, JOHN THOMPSON, and JOHN R. TURNER'S CASE.

VAN WYCK, RIKER, *and* GERARD, *Counsel for the Prosecution.*

ANTHON, PRICE, FITCH, SCOTT, *and* RODMAN, *Counsel for the Prisoners.*

A. B. and C. agreed together that A who was not responsible, should go to D. E. and F. respectively, and fraudulently purchase goods of each of them, on credit, representing himself as a person of wealth and credit, and uniformly referring the owners of the goods, for information as to his standing and competency, to B. who, upon every such application, should falsely represent that A. was a person of wealth and credit, for the purpose of inducing the said owners to trust A. upon his sole responsibility; and that he, after having so obtained the goods, might deposit them in the custody of B. and C. the more easily to convert them to their own use, without paying any adequate value therefor. It was held that such an agreement is a conspiracy.

The prisoners were indicted for a conspiracy. The indictment was very voluminous, containing fifteen counts. The first was a general one, alleging, in effect, that the prisoners, being persons of evil minds and dispositions, and common cheats, and not intending to obtain their living by honest means, but designing and intending, unjustly and unlawfully to cheat, oppress, aggrieve and impoverish certain worthy citizens of the state of New-York, to wit, Clarkson Crolius, John C. Crolius, Alexander Wiley, William Johnson, James Oliver, John B. Graham, Augustus Graham, William Kidder, Eliphalet Stuyvesant, Thomas P. Harper, Ralph Walker, and Joseph Finch, and unlawfully to obtain from them respectively, by fraudulent means, their respective goods and chattels, amounting to $2,000, on the 10th day of June, 1820, at &c. unlawfully did conspire, combine, confederate, and agree to cheat and defraud the above-named persons of their respective goods and chattels, that is to say, Clarkson Crolius and John C. Crolius, of a quantity of stoneware, of great value, to wit: $341, Wiley of one hundred iron bound barrels, $200, Johnson of six barrels of ale, $42, Oliver of twelve barrels of ale, $80, and vinegar, worth $49, the two Grahams, of eight hogsheads of rum, and three of whiskey, $500, Kidder of sixteen hogsheads and eight barrels of cider, $250, and a quantity of sealing wax and ink, $237, Stuyvesant of thirty-seven iron weights, $75, Harper and Walker of fifty barrels of flour, $243, and Finch of a gun of the value of $97. The fraudulent means adopted and agreed upon by the conspirators were, that Lewis should, fraudulently, make purchases upon credit for goods, wares, and merchandizes in his own name, of those several persons, and should represent himself as a person of wealth and credit, and worthy to be trusted, and that he should refer the owners of the goods to Thomson, for information as to his standing and competency, as a person of credit and wealth, and that Thompson (as was agreed) should, upon every application to him from the owners of the goods, falsely pretend and represent that Lewis was a person of substance and credit, and worthy to be trusted, &c. in order, that, by such false and fraudulent pretences, the owners of the goods should and would be induced to trust Lewis, and deliver him their several goods, upon his pretended purchases, on his sole responsibility and credit, and that, after hav-

ing obtained the goods, he might deposit them in the custody of Thompson and Turner; and, by that means, that the conspirators might the more easily convert and dispose of them to their own use, without paying any adequate value or equivalent for the same, and that Lewis should be the only person ostensibly responsible, well knowing that he was a person not possessed of any wealth or property, and wholly unworthy of credit, and that his notes and obligations were, and would be, worthless, to the great damage of the before-mentioned persons, and against the peace, &c.

For thus conspiring to obtain the goods of each person, and joint concern abovenamed, there were two counts: the one, a general count, alleging, that the prisoners conspired to cheat, defraud, and unlawfully to obtain by fraudulent means, from the person or concern, his or their respective goods and chattels, which are set forth, to his or their damage, &c.; and another count, which is particular, stating that the prisoners conspired to obtain, by false pretences and representations, (which are, in effect, the same as are set forth in the first count, but adapted to each case) from the person or company, his or their goods, specifying them; and that in pursuance of such conspiracy, the same means were employed as are set forth in the preceding part of the count; and that, by means of such false pretences and representations, the prisoners obtained the goods, specified in each count, to the damage of the person or concern, and against the peace, &c.

On this indictment, having pleaded not guilty, the prisoners, being English aliens, were brought to trial before a jury, *de mediatate linguae*, on Wednesday the 6th of September last.

Gerard, in a clear concise detail of facts, opened the case on behalf of the prosecution.

John Stoddard, sworn on behalf of the prosecution, testified, that in the latter part of May last, being a foreman in the distillery of the Messrs. Graham, before-named, at Brooklyn, Thompson came there with Lewis, and introduced him to the witness as a man of credit and wealth; and, shortly afterwards, Lewis came and wanted to purchase, on credit, two hogsheads of imitation rum, for which he agreed to pay thirty-nine cents a gallon, and gave Thompson as a reference. On the 15th of June, the witness went to see Thompson, for the purpose of ascertaining the situation of Lewis. Thompson, among other things, informed the witness that Lewis was a man of a capital, had brought from England $6000, and was in expectation of remittances from that country, dealt in cash, and had not more than $400 outstanding debts; but, in answer to an inquiry by the witness, of Thompson, whether he would endorse for Lewis, the former replied, "No, not for my brother;" yet, in answer to a further inquiry, he said that he considered Lewis perfectly safe. In consequence of this recommendation, the witness went to Lewis and told him, that he could have the rum at thirty-eight cents, (the price he had agreed to give being more than the article was worth,) and he then took two hogsheads. In fifteen days he came again, and purchased of John B. Graham, one of the partners, three hogsheads of proof whiskey, which was delivered by the witness, on the strength of the recommendation of Thompson before-mentioned; and, on the day Lewis shut up, he made an additional purchase of Graham of six hogsheads of imitation rum.

It further appeared, by the testimony of John B. Graham, that the sale of the first parcel of rum was on a credit of ninety days; the sale of the whiskey took place on the 8th of July, at sixty days, and that of the six hogsheads on the 14th of the same month, for cash, to be paid the next day. Lewis said, that all the liquor was to go on board a Savannah packet, as he was engaged in the southern trade; but had it all delivered on the wharf in the rear of his store, at 343 Water-street.

Having received a caution from some person relative to the circumstances of Lewis, Graham, on the 14th of July, called at the store of Lewis, and found appearances alarming; whereupon, he called on Thompson, and asked him about the responsibility of Lewis. Thompson said, that Lewis had $3000 in the Branch Bank, and the like sum in business, and was perfectly safe for $500, and that he, Thompson, would trust him $1000; but, upon being requested by Graham to endorse for the second parcel purchased by Lewis, refused. Graham then went to Lewis' store, and found a number of persons getting their

goods; and the witness took three hogsheads of his own liquor, and, shortly afterwards, went to David Demaray's store, at the corner of Greenwich and Robinson-street, and found that about four days before, three hogsheads of the same liquor had been stored there by Turner. Demaray, being indemnified by Graham, delivered it to him.

It was next proved by John P. Whitman, a clerk of William Kidder, that about three or four months ago, Lewis purchased on credit, sixteen hogsheads and eight barrels of cider, as he said for the southern market, and referred them to Thompson. Upon application, he said, that Lewis had a pretty little capital; and, that he had been engaged in business in England with credit to himself. Thompson further said, that he had dealt with Lewis, who had always paid him honourably. Lewis also purchased a quantity of ink and sealing wax, to the amount of $237, on the 3d, to be delivered on the 12th of July, for which he gave his check for $100, payable seven days' after the 12th, and his note for $140, at four months. On or about the 14th of July, the witness called on Lewis, who said, that the creditors had broken into his store, and taken away all his goods, and that he intended to prosecute.

It further appeared, that the cider and ink was found stored at Gideon Lee's store, in South-street.

Clarkson Crolius, being sworn, testified, that on the 24th or 26th of June last, Lewis called on him for some ware, to the amount of about $200, on credit, stating that he had an order from the southward for the same. The witness told him, that his partner and himself were not in the habit of doing business in that way without an endorser to the note. Lewis said, that he was not in the habit of getting an endorser, but he was ready to give a sufficient reference. He gave Thompson as such, who, on being called on by the witness, told him that Lewis was doing a snug business in the southern trade, that he had a good solid capital, and that he had dealt with him, and he had always paid him honourably.

Upon the strength of those assurances, the witness trusted Lewis stone ware to the amount of $341, and took his notes. He was very urgent to have the goods deposited on the wharf in front of his store, where they were sent. Afterwards, the witness found a part of the same goods stored at the corner of Cedar and Washington-streets, in the store of John B. Clark, and another part at John Hill's, at the corner of Carlisle and Washington-streets.—The goods were lodged at both places in the name of Turner, or in that of Turner and Co.

The day after the creditors had seized their goods at Lewis' store, the witness called on him, and he said he was not worth a dollar, and that Turner had pressed him to get goods in the way he had, to pay an old debt due him in England.

On Saturday the 15th of July, the witness called on Thompson and told him, that he had understood from the creditors, that he, Thompson, had an assignment, by bond and judgment, of all the effects of Lewis. Thompson repelled the idea, and said that it was easy to assert, but difficult to prove it. Shortly afterwards, the witness saw Turner at Thompson's store, engaged with Mr. Fitch, (the Counsel abovenamed,) who was drawing some instrument. The witness pressed for a re-delivery of the property, but could get no satisfaction; but, by giving an indemnity at one of the places where he found his goods, he got back eight hogsheads of them.

George Smith, a foreman of Joseph Finch, being sworn, testified that on the 11th of July, Lewis called on him to purchase a fine double-barrelled gun, for a gentleman at the southward. The witness had them of different prices, and Lewis selected one, for which the witness asked $100, but fell to $97. Lewis agreed to take it, and give his own check, payable in seven days thereafter, and gave Thompson as a reference; who, on being called on, on the 13th of July, said that Lewis had dealt with him to the amount of 4 or $5000, and had always paid him honourably.—The check was given, and the gun delivered on an order from Lewis; and, on applying to the bank when it became due, no funds were found. On the evening of the 14th of July, the witness went to the store of Lewis, and found the Sheriff there; and, on calling on the former for the gun, he said it was in the store; yet, the next

morning, at Thompson's store, Turner said that he had it, having purchased it of Lewis for $100 a few days before. The witness asked Turner if he had a bill of sale for the gun, and he produced one, bearing date the same day on which the gun came into the hands of Lewis.

The witness afterwards saw Lewis in the debtors' prison, and he said that he was there at the suit of Thompson, who was his friend, and that he had been pressed to get the goods in the way he had, to pay an old debt in England.

The witness was asked by the counsel for the prosecution what Lewis said relative to Turner. This inquiry was objected to on the other side, but was decided by the court to be proper, on the ground that the declaration of one of the conspirators, concerning his co-conspirator, was good evidence.

Elias Stuyvesant testified, that on the 20th of June, Lewis called on him to purchase weights, and gave Thompson as a reference, who said that Lewis was a man of a large capital; and, on this recommendation, the witness trusted Lewis with that article to the amount of $75; and, though the purchase was made on a credit of ninety, he gave his note at thirty days.

Alexander Wiley testified, that on the 5th of June, Lewis engaged him to make one hundred iron bound barrels, to go to the southward; and, having agreed to give the price, on a credit of three months, referred him to Thompson, who, on being called on, said that Lewis was a wealthy man, was about opening a store at the southward, and that he, Thompson, would trust him to that amount. The witness made and delivered seventy of them. On the 14th of July, having understood from a friend what was going on at the store of Lewis, the witness went there, and finding several persons getting their goods, he took back sixty-three of the casks. Turner came out and forbid the creditors from taking the goods, declaring, that he had a bill of sale of all in the store.

James Oliver testified, that in the middle of June, Lewis called on him for to purchase beer on credit, and gave Thompson as a reference. On the strength of his recommendation, the witness delivered Lewis, at different times, beer to the amount of $129, and though the contract was at a credit of ninety days, he gave his check, payable in a week. After he was in prison, he told the witness that he had got the property to pay Turner on an old debt due in England. On the 15th of July, the witness went to Thompson's store, where he asked Turner if Lewis was indebted to him in that country, Turner replied, "A trifle," but refused to answer further inquiries.

A part of the beer the witness found at Thompson's store, a part at Morrell's store, at Market slip, and another part at one Lee's, in Ferry-street; the two last mentioned parcels having been stored in the name of Turner and Co.

John B. Clark, John Hill, and David Demaray, on being severally sworn, testified, in effect, that Turner stored the goods at their stores respectively.

To John Johnson, of whom Lewis bough six barrels of ale, and referred him to Thompson; the latter said that he had, in his hands, $3000 cash, belonging to Lewis.

Ralph Walker, of the firm of Harper and Walker, testified, that on the 20th of June last, Lewis called on him to purchase fifty barrels of flour on credit, and referred him to Thompson, who, on being called on by the witness, accompanied by Lewis, said, that he was a man of a capital of $3000; but, on being asked whether he would become security for him, said that he would not for any man.

On the purchase of the flour, Lewis gave his check for $100, which was paid, and a note for $140, which was not paid. A part of this flour the witness found in Thompson's store, and got it back; and another part was sent from the same place to auction, and sold.

The counsel for the prosecution produced a judgment, bond and warrant of attorney, in favour of Thompson against Lewis, bearing date, and being entered up in the Supreme Court the 15th of July, 1820. Samuel M. Fitch was the attorney on record. The penalty of the bond was $3600, conditioned for the payment of $1884 29. A specification under the act, accompanied the papers, containing a running account between the parties, commencing on the 10th of April last, and ending on the 3d of July following. The debtor side amounted to $1994 74, and the credit to $88 24. On the debtor side there were three several promissory notes

set forth; the one bearing date the 31st of May, 1820, for $366, another on the 26th June, for $365, and another on the 1st of July, for $700.

The counsel for the prosecution also produced a *fieri facias*, issued on this judgment the same day it was entered up, the amount of the sheriff's sales being $197.

Oliver M. Lounds, the sheriff's clerk, testified, that Lewis was imprisoned on the 14th of July, on a capias in favour of Tompson; that, on the same day, another writ against Lewis came into the office, in favour of Harper and Walker, and that on the day following, in the afternoon, the execution, upon which the sale above mentioned took place, also came into the office and was executed.

Benjamin M. Brown testified, that Lewis, while in prison, told him, that when he came to this country he was not worth a cent; and that he became acquainted with Thompson, for the first time, in this city.

On his cross-examination, this witness further stated, that Lewis further mentioned, that he had told Thompson lies in representing himself worth 3 or $4000 when he came to this country.

Thomas Murrow, merchant, at 6 Market-slip, testified, that Turner stored there a hogshead of cider, and three hogsheads of vinegar, on the 15th of July last, and the witness understood it came from sea.

John D. Delaze testified, that Lewis, while in jail told him, that when he came to this country he had no capital.

Clarkson Crolius, on being again called, testified, that since giving his testimony he had been at Hill's store, and found the goods stored there his.

On his cross-examination he further stated, that on or about the 19th of July last, three of the creditors and himself called a meeting of the creditors, by inserting an advertisement in the papers. Fourteen or fifteen attended. The meeting was organized in the usual way; its object being to raise a fund for the purpose of employing counsel, and taking measures to bring the defendants to justice. The witness was appointed chairman and secretary.

George Truman testified, that on the 7th of November last, Thompson and Turner came fellow passengers with him in the ship Criterion, from London. The former came as a steerage passenger, and the witness believed him then to be a very poor man. After his arrival here, he wanted a situation as gardener, and was unable to purchase decent clothes.

The prosecution having rested, Rodman opened the defence.

Samuel M. Fitch, a witness on behalf of the defendants, testified, that on the day of the arrest of Lewis, Thompson came to the office of the witness in a hurry, and told him that there was a man in Water-street, who owed him a large sum of money; and, as the witness then understood him, eight or nine hundred dollars, and that the creditors had broken open his store. A capias was issued, upon which Lewis was arrested; and the next day, which was the 15th of July, upon the suggestion of the witness, the judgment, bond and warrant of attorney were given. The witness asked Thompson for a specification, and he referred him to Turner, his clerk, who made it out; and, as he was finishing it, Crolius entered.

On his cross-examination, this witness further stated, that as Thompson was from the interior of England, where a peculiar dialect prevailed, he did not pronounce the words *eighteen* and *nineteen* as we do, but cut them short; and the witness thinks that he must have misunderstood Thompson when he came for the writ, with regard to the amount Lewis owed him.

The witness produced the three several notes, of the dates of the 31st of May, the 26th of June, and the 20th of July, 1820, before-mentioned, as set forth in the specification.

Whereupon, Van Wyck laid them before the Jury on a flat surface, and it appeared, that they were written on the same piece of paper, and separated with a knife. The several indentations made in the separation precisely corresponded, and parts of letters extended downwards at the foot of one note, were carried on the head of the other.

It appeared from the bank book of Thompson, which was admitted in evidence by consent, that he had various dealings with the Mechanics' Bank; and, on the 13th of December, 1819, deposited $1000.

Van Wyck, before the opposite counsel had commenced their remarks to the jury,

cited and read the case of Worrell and Johnson, 6th Mass. Rep. p. 74.

The case was summed up by Price and Anthon, on the part of the prisoners, and by Van Wyck and Riker, on behalf of the prosecution.

It was insisted, on behalf of the prisoners, that neither of the prisoners could be convicted of this offence for meditating a fraud separately. It was necessary that all should have conspired together. The recommendation of Lewis by Thompson is a common transaction; and, if false, the latter was responsible to the creditors in a civil suit. The affairs of Lewis were no doubt bad, and his object was to get credit through the intervention of Thompson, who, for aught we know, was the only friend he had in this city. There was no assignable motive on his part to conspire. He was a man of some property, and the amount to be gained was not more than the third of $1700.

On the 14th of July, Lewis did not owe the creditors: their notes were not due: yet, they all rush forward and break open his store. Under such a pressure, not one in a thousand would be able to stand.

It was, on the whole, contended, from a variety of considerations, that neither a civil nor criminal prosecution could be supported against Thompson. The counsel referred to the case of the King vs. Turner, (13 East. 228) and to that of Cromwell and Field, (Ante, 3d vol. p. 34.)

The counsel on behalf of the prosecution urged, that this case was distinguishable from that of Cromwell and Field in this, that the means alleged in the indictment by which the conspiracy was to be effected, were, that Cromwell should, on the purchase of goods on credit, falsely represent to the owners, that he was a person of wealth and credit, and that Haviland and Field would endorse the notes of the conspirators. This was nothing more than a false assertion, grounded on the personal responsibility of Cromwell, in conjunction with a false promise relative to what others would do; but here the means alleged are, that Lewis should, upon every purchase of goods on credit, not only represent himself as a person of wealth and credit, but should refer the owners to Thompson, one of the conspirators; and that, upon every such application, he should falsely make the same representation. This being false and predicated on an existing fact, amounted to a false pretence. The artifice was calculated to circumvent; and, according to the evidence, did, in fact, deceive a number of persons.

The Mayor, in his charge to the Jury, defined a conspiracy to be an agreement or combination between two or more persons, either to do an unlawful act or a lawful one, by unlawful means; the commission of this offence may be inferred from circumstances.

This indictment consists of a number of specifications; and, should the Jury believe from the facts and circumstances, that the prisoners did conspire to obtain the goods from all or either of the owners named, by the means specified in the indictment, it would be the duty of the Jury to find the prisoners guilty.

The Mayor referred to the cases cited by the counsel for the prisoners, and instructed the Jury that they did not apply to this case. He proceeded to state to the Jury the prominent facts in the case, under several counts in the indictment, and to inquire how far each of the prisoners appeared to be implicated, and finally concluded by instructing the Jury, that if they could believe that the recommendation given of Lewis by Thompson was given in good faith, and that there was no understanding between them to obtain the goods by the means set forth, they ought to be acquitted, otherwise convicted.

The Jurors did not agree, and were discharged by consent.

On Tuesday the 12th of October, the prisoners were again brought to trial; and, after Van Wyck had opened the case, and called one witness, they pleaded guilty to the indictment.

An arrangement, as we understand, had been entered into, by which the prisoners agreed, as far as might be in their power, to satisfy the creditors.

The prisoners were each fined $100, and the costs.

(ASSAULT AND BATTERY—ESCAPE.)

JOHN TURNEY'S CASE.

VAN WYCK, *Counsel for the prosecution.*

WILSON, *Counsel for the prisoners.*

For an officer who has taken one on an execution against his body, at his own house, to permit him to go out of his sight into another room to shift his clothes, and get his bed to go to prison, is an act of humanity, and is not such an escape as will justify the debtor, while on his way there, in assaulting and beating such officer.

On a *si nul*, or execution from the ward justice court, directing the officer if he find no goods, to take the body, it seems that if on calling on the debtor with the execution, he does not turn out goods, but says he will go to prison, the officer may legally take him there; and it will be no justification to the debtor, after having committed an assault and battery on the officer, while on the way there, to allege, that when the execution was served, there was sufficient property to satisfy it, and, therefore, the arrest was illegal. If there had been property, it was the duty of the debtor to have turned it out to the officer.

The prisoner was indicted for an assault and battery, committed on Henry K. Frost, a Marshal, while in the execution of his duty as such, on the 1st of September last.

It appeared in evidence, that on the day preceding, the prosecutor had a *si nul*, or execution issuing from one of the ward courts, by virtue of a recent statute, commanding him, in substance, to collect $15 of the goods and chattels of the prisoner, and, if no goods could be found, to take him to prison. The prosecutor went to the prisoner's house at Coerlaer's Hook, and looked for goods, but did not find sufficient to satisfy the execution, and though the prisoner was there, went away without serving it. The next day he saw the prisoner at Catherine Market, who told him, that if he would go home with him he would pay the money. Before they had arrived there, the prisoner concluded to go to jail; and, on their arrival at his house, he requested the officer to suffer him to go up stairs to put on a shirt, and get his bed to go to prison. This indulgence being granted, the officer stepped across the street to speak to a man, and returned, when the prisoner acquiesced in going to prison; but, while on the way through those hills near the Hook, where there are no buildings, the prisoner assaulted the prosecutor with violence, threw him down among the rocks, and escaped. By the assistance, however, of some persons, he was brought to Bridewell.

Wilson, after having introduced some testimony to show that there was sufficient property on the premises to satisfy the execution, rested the defence on two grounds:

1. The officer did not do his duty in looking for goods.

2. He twice permitted a *voluntary escape*, and the subsequent arrest was illegal. For these reasons, the prisoner, being falsely imprisoned, was justified in making use of so much force as was necessary to extricate himself from that imprisonment.

Van Wyck contra.

The Mayor charged the Jury, on the first point, that if the prisoner had sufficient goods to satisfy the execution, it was his duty to have surrendered it to the officer. On the second point, that the indulgence granted by him to the prisoner was an act of humanity, and it did not lie in his mouth to say to the officer, "You extended this indulgence to me, and, therefore, I had a right to knock you down, and beat you." This was the amount of the defence, and a more unconscientious one was never offered to a Court and Jury. The escape relied on, in the opinion of the Court, is not a *voluntary* one, and affords no justification for the prisoner's conduct. It was the duty of Courts and Juries, as far as might be in their power, without subverting established rules of law, to do substantial justice, and to have their judgments and decisions subservient to the great principles of morality.

The prisoner was found guilty, and sentenced to the penitentiary sixty days, to pay a fine of $50 and costs, and to remain committed till the sentence be complied with.

(ASSAULT AND BATTERY.)

JOHN BALBIE, DIVINE BALBIE, and SALLY GALL'S Case, *ind.* with MARGARET HODGES.

VAN WYCK *and* PRICE, *Counsel for the prosecution.*

SEELY, *Counsel for the defendants.*

On an indictment, containing two counts, each, alleging that an assault and battery was committed by four persons, the Jury may find the whole guilty, though it may appear in proof, that three of them only were engaged together at the same time, in committing such offence; and that one of them, at another time, committed the offence on the same person as the others did; and, in such case, the three must be found guilty on one count, and the fourth acquitted on that but convicted on the other count.

In such case the Court will not permit a verdict of acquittal to be rendered in favour of the fourth, that he may be admitted a witness for the others.

The defendants were indicted for an assault and battery, committed on Jane Dulux. The indictment contained two counts, in each of which it was alleged, that all the defendants committed that offence.

It appeared, that the prosecutrix, invited by the defendant first above-named, went to his house, and, in his absence, was beaten by the women above-named. She escaped, and went into a neighbouring house; and, shortly afterwards, when she saw him in his house, looking from the window, she informed him of the abuse she had received, and he then came down, followed her into the house, and struck her with his hand.

It was urged to the Court, that as respected the man, the indictment could not be maintained, because, in both counts, the defendants were jointly charged; but, from the proof, it appeared that he was engaged in a separate transaction.

The Mayor said, that there was nothing in this objection. The counts were separate and distinct charges; and, it was competent for the Jury, and it would be their duty, if they believed the evidence, to convict the three engaged in the assault and battery in the first instance, on the first count, and acquit the defendant first named on that but convict him on the other.

It was then moved that the Jury acquit the man on the first count, that he might be sworn as a witness in favour of the other defendants on the same count.

The Court refused this application for this, with other reasons, that it was a question for the Jury to decide whether, as he invited the prosecutrix to his house, he was not concerned with the others in the offence.

The defendants were convicted, and the two first named fined $50 each, and costs, and the third $5.

(GAMBLING.)

DAVID LYNER and ANTHONY LYNER'S Case.

VAN WYCK, *Counsel for the prosecution.*

RIKER *and* ANTHON, *Counsel for the defendants.*

To keep instruments of gambling in a house, and permit persons to play for small sums, merely sufficient to pay for the use of such instruments, or for drink, is indictable; this being more pernicious than gambling on a high scale.

The defendants were indicted for keeping a common ill-governed and disorderly house, in the sixth ward of this city, in Pearl, near Chatham-street.

It appeared that the defendant, Anthony Lynor, kept a grocery on the premises, and in another part of the building kept a billiard table and other instruments of gambling, and permitted persons to play for small sums, sufficient to pay the charge of the owner for each game, and sometimes for drink, which was furnished by him from the grocery. The gambling did not appear to be otherwise excessive, except from the testimony of Sarah Pie, who testified, that she had seen persons play there late at night, and even on Sunday.

The only point submitted to the Court was, whether in a case of this description to constitute a nuisance, it was not necessary that the gambling should be excessive.

The Mayor decided, and so charged the Jury that the question whether keeping a gambling house of this description, was punishable as a nuisance, did not depend on the amount staked; for what might be considered as excessive gambling by one person, might not by another; and that the species of gambling which appeared in this case to have been practised, was infinitely more pernicious than if each person, on playing, had been required to stake $10. If, therefore, the Jury believed that the common practice of playing in this house was such as is disclosed in proof, it would be their duty to convict the defendant.

He was convicted, and fined $20, and costs, and was laid under a recognizance of $250.